IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9920 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHALENDRASINGH RANJITSINGH SAKHAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9920 of 2002

MR IS SUPEHIA for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/10/2002

ORAL JUDGEMENT

The petitioner was a constable in the Police Department of the State of Gujarat. The petitioner was served with a chargesheet dated 25-10-1994 in the departmental inquiry alleging that on 9-3-1994, when the

petitioner was under suspension in connection with another misconduct, the petitioner tried to outrage the modesty of a lady (particulars given in the chargesheet) near the village pond of village Medhasan. It is not necessary to set out in detail the allegations made against the petitioner as to how he misbehaved with the said lady but the said lady and another lady accompanying her shouted and upon other people coming there, the petitioner went away. The father of the victim lady also filed a criminal complaint against the petitioner for the offence punishable under Section 354 of the Indian Penal Code. The disciplinary authority i.e. the DSP passed the order of dismissal on 26-6-2000 (Annexure D). The petitioner's departmental appeal came to be dismissed by the Special Inspector General of Police, Ahmedabad. The petitioner's first revision came to be dismissed by the Director General of Police and the petitioner's second revision came to be dismissed by the State Government by order dated 12-6-2002 (Annexure G). The aforesaid concurrent orders of the authorities are under challenge in this petition under Article 226 of the Constitution.

2. Mr Supehia learned counsel for the petitioner has raised the following contentions:-

(i) The Inquiry Officer had found that the charge levelled against the petitioner was not proved (Annexure "B"). Though the disciplinary authority disagreed with the said findings and recorded reasons for the disagreement in the notice dated 15-3-2000 (Annexure C), the disciplinary authority i.e. the DSP had already taken the decision holding that the petitioner was guilty of the charge levelled against him and, therefore, the second show cause notice merely called upon the petitioner to show cause why the penalty of dismissal should not be imposed. The petitioner, therefore, did not have a reasonable opportunity of defending himself as the second show cause notice did not state that it was open to the petitioner to show cause why the disciplinary authority should not differ from the findings of the Inquiry Officer.

Strong reliance is placed on the decision of the Apex Court in Yoginath D Bagde vs. State of Maharashtra, AIR 1999 SC 3734.

(ii) The disciplinary authority relied on the statements of witnesses in the course of investigation, though the witnesses did not

support the department at the departmental inquiry. Even the star witness (alleged victim) did not support the department and, therefore, the Inquiry Officer had rightly held that the charge levelled against the petitioner was not proved. Under the circumstances, the disciplinary authority ought to have exonerated the petitioner from the charge.

(iii) The authorities have treated the compromise purshis in the criminal case as an admission of guilt though the petitioner was acquitted in the criminal case and therefore also the impugned order is illegal.

(iv) While imposing the penalty, the disciplinary authority has taken into consideration the previous misconduct and penalty imposed upon the petitioner in an earlier inquiry without referring to the same in the second show cause notice and, therefore, the penalty order is passed in violation of Article 311(2) of the Constitution and the principles of natural justice as held by the Apex Court in the State of Mysore vs. K. Manche Gowda, AIR 1964 SC 506.

(v) Lastly, it is contended that the appellate authority committed breach of the provisions of Rule 15 of the Bombay Police (Punishment and Appeal) Rules, 1956.

CONTENTION (i)

3. As far as the first contention is concerned, a cursory reading of the second show cause notice dated 15-3-2000 (Annexure C) might create an impression that it did not in terms call upon the petitioner to show cause why the disciplinary authority should not differ from the Inquiry Officer but the said notice is required to be read in its entirety. The Disciplinary authority not only set out the reasons for disagreement with the Inquiry Officer and called upon the petitioner to show cause why the penalty of dismissal should not be passed, but it also indicated in the impugned notice that the petitioner was at liberty to submit his written defence within ten days and that if such reply was not received, the disciplinary authority will proceed further on the footing that the petitioner has no submissions or defence to offer and that if the petitioner would submit his defence/submissions, the same shall be taken into consideration before taking the final decision. If the

petitioner was desirous of getting a personal hearing, it may be specifically mentioned in the defence reply. A copy of the Inquiry Officer's report was also enclosed with the said show cause notice.

4. A proper reading of the said show cause notice, therefore, clearly indicates that the disciplinary authority had called upon the petitioner to submit his defence on merits also and the defence invited was not to be confined to the proposed penalty of dismissal. For reasons best known to him, the petitioner has not produced his reply to the second show cause notice. It is possible to infer that in the reply to the said notice, the petitioner had submitted his defence on merits of the charge also. This is clear from the fact that while passing the final order of dismissal on 26-6-2000 (Annexure D), the disciplinary authority has discussed the evidence and has given detailed findings for coming to the conclusion that the charge levelled against the petitioner was proved. If the disciplinary authority had intended, while issuing the second show cause notice dated 15-3-2000, that he had already taken the final decision holding the petitioner to be guilty of the charge levelled against him, in the final order the disciplinary authority would not have discussed the evidence for arriving at the finding of guilt against the petitioner. Hence the first contention cannot be accepted.

5. In view of the above discussion, no useful purpose would be served by referring to the decision in Yoginath D Bagde vs. State of Maharashtra (supra) where the Apex Court was dealing with a case where the disciplinary authority had already taken the final decision for holding the delinquent guilty and the second show cause notice was issued calling upon the delinquent to show cause why the penalty of dismissal should not be imposed upon the delinquent in view of the charges held established. This is also clear from paras 35, 36 and 40 of the said judgment. The facts of the present case as discussed in the preceding paragraph clearly indicate that the disagreement with the inquiry officer's report as reflected in the second show cause notice was only tentative.

CONTENTION (ii)

6. As regards the second contention, the learned counsel for the petitioner has vehemently submitted that since the witnesses, particularly the alleged victim, did

not give statements against the petitioner at the departmental inquiry, the Inquiry Officer had rightly held that the charge levelled against the petitioner was not proved and, therefore, the disciplinary authority could not have relied upon the statements of the witnesses recorded on 9-3-1994.

7. It is required to be noted that the lady whose modesty was outraged was residing in a village. The incident in question took place on 9-3-1994 which was immediately followed by institution of a criminal case against the petitioner on the same day. Investigation was also conducted on the same day and the witnesses including the victim and another lady, who was an eye witness had given statements against the petitioner. However, the departmental inquiry was conducted much later and the statements of the witnesses were recorded on 21st and 23rd December, 1995 i.e. after passage of more than 1 year and 9 months. The disciplinary authority, therefore, did not act unreasonably in drawing inference against the petitioner that most of the witnesses were prevailed over and, therefore, they had turned hostile but nothing was indicated by the victim or other witnesses as to why the statements recorded on 9-3-1994 were given against the petitioner. On the contrary, one of the witnesses i.e. Jyotsnaben who was accompanying the victim lady at the time of the incident (and whose statement was also recorded on 9-3-1994) stated at the departmental inquiry that the incident in question had taken place as alleged in the chargesheet. The father of the victim lady (though not an eye witness) also stood by the complaint (Inquiry reports pages 2 and 3). In this set of circumstances, when the disciplinary authority has, on appreciation of evidence including the evidence of Jyotsnaben and the first available statements, which were against the petitioner, remaining unexplained by the witnesses at the departmental inquiry, it cannot be said that there was no material before the disciplinary authority for coming to the conclusion that the charge levelled against the petitioner was proved. This Court is not to go into sufficiency or adequacy of the evidence. As per the settled legal position, in a writ petition under Article 226 of the Constitution, this Court does not sit in appeal over the decision of the disciplinary authority which decision is confirmed by the appellate as well as the two revisional authorities.

8. The reason for not accepting the second contention urged on behalf of the petitioner can also be better appreciated by keeping in mind the perspective which emerges from the following principles laid down by

the Hon'ble Supreme Court in State of Rajasthan vs. BK Meena, AIR 1997 SC 13, which decision was of course in a slightly different context i.e. about the employer proceeding with the departmental inquiry during pendency of the criminal trial.

"The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under (the relevant criminal law) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different.....

It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements....."

The above principles clearly indicate that the Courts would be committing a subtle, but fatal, error by interfering with the decision of the departmental authorities in disciplinary proceedings by applying the principles of the standard of proof and appreciation of evidence in criminal trials to departmental inquiries also.

CONTENTION (iii)

9. As regards the contention that the authorities erred in treating the compromise purshis dated 6-4-1999 before the criminal court as an admission, the disciplinary authority has referred to said aspect only to show that since the petitioner as well as the victim both belonged to the same village, the compromise was arrived at and, therefore, the petitioner was acquitted. Reference is made to the criminal case which culminated into a compromise only to indicate that but for the incident having taken place, the criminal case would not

have been instituted against the petitioner and, therefore, the compromise in the criminal case which enabled the petitioner to get an order of acquittal did not mean that the incident in question constituting misconduct had not taken place at all.

As per the settled legal position, acquittal in a criminal case does not necessarily mean that the delinquent employee is entitled to be exonerated in the departmental inquiry as well, more particularly, when the acquittal in the criminal case was on the basis of the compromise and not after a full-fledged trial. The inelegant manner in which the reference is made to the criminal case and compromise is to be considered and appreciated in light of the fact that the departmental proceedings were conducted by the police department and not by a Court.

CONTENTION (iv)

10. Coming to the contention that the disciplinary authority relied upon the previous penalty of stoppage of two increments with future effect in the impugned order of dismissal without referring to the same in the second show cause notice or at any other previous stage, it is true that if the misconduct proved at the departmental inquiry in question were not serious enough and if the disciplinary authority were to refer to some past misconduct in order to justify a harsher penalty than would be warranted by the misconduct proved at the departmental inquiry, it would be incumbent upon the disciplinary authority to refer to such previous misconduct/penalty in the second show cause notice. However, in the facts of the instant case, the misconduct which is found to have been proved at the departmental inquiry is serious enough to warrant the penalty of dismissal and, therefore, even if the reference to the previous misconduct or penalty imposed in the past is excluded from consideration, it would make no difference to the final order of penalty. This is so because the Apex Court has already held in State of Orissa vs. Bidyabhushan Mahapatra, AIR 1963 SC 779 as under:-

"if the order (of dismissal) may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal prima facie make

out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

(emphasis supplied)

In State of Maharashtra vs. BK Takkamore, AIR 1967 SC 1353, the Apex Court explained the above decision in the following terms:_

"The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be non-existent or irrelevant can be sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision."

(emphasis supplied)

In the facts of the present case, the Court is satisfied that the Disciplinary authority would have passed the order of dismissal on the basis of the misconduct proved at the departmental inquiry and that the exclusion of reference to the previous misconduct or the penalty imposed in the past could not have affected the ultimate decision to dismiss the petitioner from service.

CONTENTION (v)

11. Coming to the last contention that the appellate authority committed breach of Rule 15, the argument is too vague to merit any consideration. The submission is that it was for the appellate authority to indicate why the penalty should not be considered to be excessive.

As per the settled legal position, it was for the petitioner-appellant to satisfy the appellate authority whether the penalty was excessive. In any view of the

matter, no useful purpose would be served by entering into this discussion because the Court has already found that the misconduct proved against the petitioner was serious enough to warrant the penalty of dismissal.

O R D E R

12. All the contentions urged on behalf of the petitioner being devoid of merit, the petition is summarily dismissed.

(M.S. Shah,J)
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